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FIRST GENERAL COUNSEL'S REPORT

CELA

MUR: 6790
DATE COMPLAINT FILED: March 5, 2014
DATE OF NOTIFICATIONS: March 12, 2014
DATE OF LAST RESPONSE: July 7, 2014
DATE ACTIVATED: August 28, 2014

EXPIRATION OF STATUTE OF LIMITATIONS:
Earliest: January 19, 2015
Latest: November 2, 2015
ELECTION CYCLE: 2010 (Special Election)

COMPLAINANT: Kirsten Hughes, Massachusetts Republican Party

RESPONDENTS: Martha Coakley
Martha Coakley for Senate Committee and Anne
Gentile in her official capacity as treasurer
Anne Gentile

**RELEVANT STATUTES
AND REGULATIONS:** 52 U.S.C. § 30114(a)(6)¹
52 U.S.C. § 30114(b)
52 U.S.C. § 30104(b)
52 U.S.C. § 30108(c)(2)
11 C.F.R. § 110.3(d)
11 C.F.R. § 113.1(g)
11 C.F.R. § 113.2(2)

INTERNAL REPORTS CHECKED: Disclosure reports

FEDERAL AGENCIES CHECKED: None

I. INTRODUCTION

Martha Coakley was a U.S. Senate candidate in a special general election held in
Massachusetts in January 2010 and Martha Coakley for Senate Committee (the "Coakley

¹ On September 1, 2014, the Federal Election Campaign Act of 1971, as amended, (the "Act") was transferred from Title 2 to new Title 52 of the United States Code.

1 Committee") was her principal campaign committee. Coakley was also the elected attorney
2 general of Massachusetts and running for reelection in the 2010 general election. The Complaint
3 alleges that: (1) the Coakley Committee made impermissible contributions to Coakley's state
4 attorney general campaign committee; (2) Coakley and Anne Gentile, the Coakley Committee's
5 former treasurer and Coakley's sister, violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C.
6 § 439a(b)) by personally using campaign funds when the Coakley Committee paid Gentile for
7 unnecessary services and purchased unnecessary compliance systems; and (3) the Committee
8 violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) when it failed to itemize one
9 disclosed credit card payment for \$3,763.10.² (The Committee has since itemized this payment
10 in an amended report.) In separate Responses to the Complaint, Coakley and Gentile contend
11 that the allegations are meritless, arguing that the transfer of excess federal campaign funds to a
12 state campaign is permissible. The Coakley Committee's termination request was accepted on
13 January 8, 2014. It did not respond to the Complaint.

14 We recommend that the Commission find no reason to believe that any contributions by
15 the Coakley Committee to Coakley's state committee violated the Act because the Act does not
16 prohibit such contributions. We further recommend that the Commission find no reason to
17 believe that Coakley and Gentile personally used federal campaign funds in violation of
18 52 U.S.C. 30114(b) (formerly 2 U.S.C. § 439a(b)) because the allegation is vague, lacks
19 evidentiary support in the record, and the complaint, response, and publicly available
20 information, taken together, fail to give rise to a reasonable inference that a violation has
21 occurred. Finally, we recommend that the Commission exercise its prosecutorial discretion

² The Complaint also briefly asserts that Coakley violated the Act through "unlawful funding of advertisements and travel," which we assume refer to the advertisements promoting Coakley's campaign website. Compl. at 1. The reference to unlawful funding of travel is unexplained, but may refer to the credit card charges for a "convention" that form the basis of the third allegation addressed below.

1 under *Heckler v. Chaney*, 470 U.S. 821 (1985) to dismiss the allegation that the Coakley
2 Committee violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)) because of the low
3 amount of the partially disclosed disbursement (\$3,762.10) and because the Committee amended
4 its report to disclose the missing information before the Complaint was filed.

5 **II. BACKGROUND**

6 Martha Coakley won election for a four-year term as the Massachusetts Attorney General
7 in 2006. Following the death of Sen. Kennedy on August 25, 2009, Massachusetts held a special
8 election to select a Senator to complete the remainder of Kennedy's term. Coakley won the
9 Democratic party's special primary election but lost the special general election to Scott Brown
10 on January 19, 2010. In November of 2010, Coakley won reelection as the Massachusetts
11 attorney general and remains in that position today. Coakley is currently running for governor of
12 Massachusetts.³

13 **III. ANALYSIS**

14 **A. The Coakley Committee's Allegedly Unlawful Contribution to Coakley's** 15 **State Committee**

16 The Complaint alleges that the Respondents used the Coakley Committee's funds to
17 support Coakley's state attorney general campaign in three ways. Compl. at 1. First, the
18 Coakley Committee paid for an ad (Exhibit A to the Complaint) that promoted Coakley's
19 campaign website (www.marthacoakley.com), which in turn solicited contributions to her state
20 campaign. *Id.* Second, the Coakley Committee incurred \$3,763.10 in credit card charges at a

³ In MUR 6216 (Coakley for Senate), the Commission addressed the reverse allegation — that Coakley's state committee used its non-federal funds to benefit the Coakley Committee — from the same complainant. The Commission concluded that the Committee's response rebutted one allegation and it exercised its prosecutorial discretion to dismiss the other allegation based on the low potential amount in violation. Statement of Reasons, Comm'rs Peterson, Bauerly, Hunter, McGahn, and Weintraub, MUR 6216.

1 time when Coakley was not seeking federal office "and had stated that she was actively seeking
2 state office," from which facts the Complaint infers that the credit card charges constituted
3 contributions to the state committee. Compl. at 1-2. Third, Coakley's committee spent \$35,000
4 to purchase financial compliance software, paid \$10,000 to a federal campaign finance
5 compliance consultant, and paid \$28,000 for compliance services, even though — according to
6 the Complaint — the Committee was inactive and not complying with its reporting requirements.
7 Compl. at 2. Thus, "Coakley's inactive Committee appears to have been noncompliant with
8 federal reporting requirements and used federal campaign funds to buy software that only brings
9 a political benefit to her state campaign committee." *Id.*

10 The Complaint asserts that "[a]ll transfers from the federal to a state campaign of the
11 same individual are prohibited by federal law." *Id.* To support this allegation, the Complaint
12 cites and quotes 11 C.F.R. § 110.3(d), which "prohibits all transfers from the nonfederal to a
13 federal campaign" of the same candidate. *Id.* Coakley's Response contends that the Act does
14 not "bar transfers from a federal campaign to a state committee," but also cites no authority.
15 Resp. at 1.

16 The Commission has a long and consistent history of permitting contributions from a
17 candidate's federal committee to her or his state committee. The Act and Commission
18 regulations identify six categories of permissible uses of contributions accepted by a federal
19 candidate, including "for any other lawful purpose." 52 U.S.C. § 30114(a)(6) (formerly 2 U.S.C.
20 439a(a)(6)); 11 CFR 113.2(e). Since at least 1980, the Commission has permitted, as one lawful
21 purpose, the transfer of excess federal campaign funds to a candidate's state committee, "so long
22 as the proposed transfer of funds from the Federal campaign committee to the local campaign
23 committee is permissible under [state] law, and assuming any funds so transferred are in fact

1 used in the candidate's local election campaign and not diverted to the candidate's personal use,
2 such a transfer would be permissible under 2 U.S.C. 439a." See Advisory Op. ("AO")1986-05
3 (Barnes for Congress Committee) (permitting contribution of candidate's congressional
4 committee funds to his state committee supporting his campaign for prosecutor); *see also* AO
5 1996-52 (Andrews for Congress) at 2-4 (noting that the Commission has determined that the use
6 of excess campaign funds for future non-federal election campaigns would be a lawful purpose
7 under section 439a); AO 1993-10 (Comite Amigos Tito Colorado) (former federal candidate
8 permitted to use excess federal campaign funds to run for governor); AO 1980-113 (Zell Miller
9 for U.S. Senate Committee) (concluding that in the absence of any [state] statute to the contrary,
10 federal committee could dispose of its excess campaign funds by establishing a campaign fund
11 for the candidates future campaigns for Federal, state or local office . . . [assuming] that the
12 excess funds . . . are, in fact, used for campaign purposes).

13 The Complaint's allegation rests solely on the assertion that the Committee's
14 disbursements benefitted Coakley's state campaign after Coakley's federal campaign concluded.
15 Based on the permissibility of using excess federal funds for state campaigns summarized above,
16 including advisory opinions that serve as a shield to enforcement pursuant to 52 U.S.C.
17 § 30108(c)(2) (formerly 2 U.S.C. § 437f(c)(2)), we recommend that the Commission determine
18 that there is no reason to believe that Respondents violated the Act as alleged.

19 **B. Coakley and Gentile's Alleged Personal Use of Campaign Funds**

20 The Complaint alleges that the Coakley Committee's funds were converted to personal
21 use in violation of 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)), Compl. at 1, specifically,
22 that the Committee paid \$28,000 to Anne Gentile, Coakley's sister and the Committee's
23 treasurer, for compliance services even though the Committee "was largely inactive" and the

1 services were "duplicative of services and systems already purchased by the dormant
2 committee." Compl. at 2. Contributions accepted by a candidate may not be converted to the
3 "personal use" of any person, 52 U.S.C. § 30114(b)(1) (formerly 2 U.S.C. § 439a(b)(1));
4 11 C.F.R § 113.1(g), that is, used "to fulfill a commitment, obligation or expense of any person
5 that would exist irrespective of the candidate's campaign or duties as a Federal officeholder."
6 11 C.F.R § 113.1(g); *see also* 52 U.S.C. § 30114(b)(2) (formerly 2 U.S.C. § 439a(b)(2)).
7 Candidates may, however, pay family members for their *bona fide* services pursuant to 11 C.F.R.
8 § 113.1(g)(1)(i)(H).

9 The Complaint does not support the personal use allegation with any basis to conclude
10 that the services provided by Ms. Gentile were anything other than *bona fide* services at fair
11 market value. Respondents also deny the allegation. Coakley Resp. at 2 (characterizing the
12 allegation as "erroneous"); Gentile Resp. at 1 (adopting Coakley's Response). And, even if the
13 alleged fact that the Committee's compliance spending was wasteful were true, a mere dispute
14 over the necessity of the spending standing alone would not give rise to a reasonable inference
15 that Coakley or Gentile converted campaign funds to personal use. Accordingly, we recommend
16 that the Commission find no reason to believe that Martha Coakley or Anne Gentile violated
17 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)).

18 **C. The Coakley Committee's Alleged Failure to Itemize Credit Card Purchases**

19 The Complaint also alleges that the Committee violated 52 U.S.C. § 30104(b) (formerly
20 2 U.S.C. § 434(b)) when it failed to itemize credit card purchases totaling \$3,763 disclosed on
21 October 18, 2012 as "credit card payment/convention." Compl. at 1-2. The Respondents
22 itemized this payment, however, through an amended report filed before the Complaint was
23 filed. Resp. at 2; Coakley Committee Amended 2012 Year-End Report at 13-17 (Dec. 30, 2013).

1 Based on the low amount potentially in violation and the Committee's self-disclosure and
2 amendment before the Complaint was filed, we recommend that the Commission dismiss this
3 allegation pursuant to the Commission's prosecutorial discretion. *Heckler v. Chaney*, 470 U.S.
4 821 (1985).⁴

5 IV. RECOMMENDATIONS

- 6 1. Find no reason to believe that Martha Coakley for Senate Committee and Anne
7 Gentile in her official capacity as treasurer violated the Act through impermissible
8 contributions to Coakley's state attorney general campaign.


⁴ Respondents further contend that the Coakley Committee is not a proper respondent because it terminated and, therefore, it "is no longer subject to the Commission's jurisdiction." Resp. at 1 n.1, 2. Respondents cite no authority for this proposition and we are aware of no such authority. "Termination" merely refers to cessation of a registered political committee's ongoing reporting obligations. Termination may be appropriate where a political committee wishes to cease its existence, where an organization with a federal account qualifying as a political committee wishes to close that account, or where an ongoing entity previously qualifying as a political committee no longer qualifies as a political committee under the Act. Accordingly, the letters that the Commission routinely send to committees upon termination, including the letter sent to the Coakley Committee, state that the "committee is no longer required to file reports on a periodic basis" but that, after termination, the committee must still retain its records for inspection for three years, may be subject to requests for information, and may still be required to re-register if it becomes active in federal elections. See, e.g., Letter from Christopher Whyrick, RAD Senior Analyst, FEC, to Anne C. Gentile, Treasurer, Martha Coakley for Senate Committee (Jan. 8, 2014).

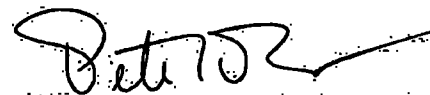
The Commission has typically dismissed allegations without regard to the fact that a respondent committee has terminated. See, e.g., Factual and Legal Analysis, MUR 6383R (Fisher for Ohio) (dismissal of matter as to terminated committee following court remand not based on the fact that the committee had terminated); MUR 5821 (Judi Parker for State Representative) (EPS dismissal of a terminated committee not based on the fact that the committee had terminated); see also MUR 6638 (Todd Long) (dismissal based on several reasons, including the fact that the committee was terminated). One potential anomaly is MUR 5358 (Morgan for Congress) in which the Commission approved closing the file without a finding as to a committee because it had terminated. That case, however, involved a 26-year-old first-time candidate who dropped out of the race before the election, and who took personal responsibility for the committee's reporting violations on a knowing and willful basis as the committee's *de facto* treasurer. See Resp. at 1, MUR 5358 (Morgan for Congress); Conciliation Agreement ¶¶ IV.17, V.1-7, MUR 5358.


Gentile also asserts that she is no longer subject to the Commission's jurisdiction because the Coakley Committee terminated. Gentile Resp. at 1. The fact that the Committee has no further ongoing reporting violations is not dispositive. In past matters resolving allegations against terminated Committees, cited above, the Commission has typically addressed its decision to the treasurers of the committees involved in their official capacities. Additionally, the allegations of personal use against Gentile in this matter by their nature raise the prospect of her liability in her individual capacity. Finally, the Commission may also hold treasurers — including former treasurers — personally liable for violations "when available information . . . indicates that the treasurer had knowledge that his or her conduct violated a duty imposed by law, or where the treasurer recklessly failed to fulfill his or her duties under the act and regulations, or intentionally deprived himself or herself of facts giving rise to the violations." See *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

2. Find no reason to believe that Martha Coakley violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)) by personally using federal campaign funds belonging to the Martha Coakley for Senate Committee.
3. Find no reason to believe that Anne Gentile violated 52 U.S.C. § 30114(b) (formerly 2 U.S.C. § 439a(b)) by personally using federal campaign funds belonging to the Martha Coakley for Senate Committee.
4. Dismiss pursuant to the Commission's prosecutorial discretion the allegation that the Martha Coakley for Senate Committee and Anne Gentile in her official capacity as treasurer violated 52 U.S.C. § 30104(b) (formerly 2 U.S.C. § 434(b)).
5. Approve the attached Factual and Legal Analysis.
6. Approve the appropriate letters.
7. Close the file.

Date: 10/17/14


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